



Neutral Citation Number: [2020] EWHC 3209 (Fam)

Case No: FA-2020-000082

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 25/11/2020

**Before :**

**THE HONOURABLE MRS JUSTICE JUDD DBE**

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**Between :**

**K**  
**- and -**  
**G**

**Appellant**

**Respondent**

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**The Appellant appeared in person.**  
**The Respondent did not attend.**

Hearing dates: 19 November 2020  
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**Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
**THE HONOURABLE MRS JUSTICE JUDD DBE**

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

**Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down will be deemed to be 10:30am on 25 November 2020. A copy of the judgment in final form as handed down will be automatically sent to the parties shortly afterwards**

## **The Hon Mrs Justice Judd :**

1. This is an appeal against a finding by Miss Recorder Davies in a judgment dated 11<sup>th</sup> March 2020 made in the course of Children Act proceedings. At a fact finding hearing (which dealt with other allegations as well as this) she found that the appellant mother assaulted by the father in the course of an argument just before they separated. The appeal relates only to this particular finding.

### The allegations of assault and the finding

2. The mother asked the Recorder to find that the father flew into a rage and was verbally and physically abusive to her on 9<sup>th</sup> November 2018 when she asked him for a lift to a school event that she was attending. She said that he grabbed her hand and her throat, held her up to the wall and then threw her to the floor. She said she had fought back as best she could, by flailing her arms. The father then did give her a lift to the school event. The following day she rang the father's parents to ask them to persuade him to leave the family home, and as a result he did so, going to stay in a hotel for two days.
3. The father asked the Recorder to find that it was the mother had assaulted him. He alleged that the parties had been arguing for most of the day on 9<sup>th</sup> November 2018 (he gave very specific details about what each of them had been doing and when) and that in the evening the mother was extremely verbally abusive to him and had refused to let him leave the bathroom. He said she had slapped him to the face several times, then punched him causing his lip to split and bleed. He also said that she scratched him hard to the neck with her fingers leaving deep marks. The mother had contacted his parents and they were so concerned to see his injuries that they advised him to leave the house, and he did so that very night. In his statement for the court he identified the date as being 9<sup>th</sup> November because he took photographs of his injuries which were dated.
4. For the hearing before Miss Recorder Davies the mother produced detailed documentary evidence which established beyond doubt that she had been at work all day on 9<sup>th</sup> November which was a Friday and had only returned relatively late in the afternoon. She produced evidence of some texts between the parents on that day on mundane matters which show that they were not being hostile to one another.
5. When confronted with the mother's evidence about what had happened on Friday 9<sup>th</sup> November, the father stated that he must have been mistaken about the date. He changed his evidence and said in fact that the main part of the argument and certainly the assault had taken place on the Saturday 10<sup>th</sup> November. He said that although there had been an argument there had been no violence on the evening of Friday 9<sup>th</sup> November before the mother went out.
6. The father said in his oral evidence before the Recorder that he remembered taking pictures of his injuries in the garage on the Saturday evening, which also fitted with the rest of the evidence, namely that the assault (as he alleged) had taken place on the Saturday 10<sup>th</sup>. He stated that the mother had taken the children swimming during the day and had come back in a highly aggressive mood and that his 'ears were ringing' she was shouting so much. She had then assaulted him and he was in a lot of pain

from the injuries. His mother and father had been contacted on Facetime and they were so concerned that they told the father to pack a bag and to leave the house, and that is what he did. He wholly denied the mother's case that it was she who had asked him to leave the house because of his assault on her the night before, and that she had telephoned his parents because was refusing to do so.

7. Hotel receipts showed that the father had left the home on Saturday 10<sup>th</sup> November.
8. Because the date that the father had originally given, namely 9<sup>th</sup> November, would not fit his evidence about the quite detailed surrounding circumstances of the assault (namely that the argument had started in the morning, the mother had taken the children swimming etc) the question of how the father came to have alighted on the particular date was a matter of discussion at the hearing. The photos the father had provided for the bundle were not date stamped. In discussions with the mother at the submissions stage the judge put it to her that if the father had simply add a mistake about the date of the photograph, his account would otherwise be accurate.

#### The judgment

9. In her judgment the Recorder preferred the father's account to that of the mother. She said in particular that his account was supported by a photograph of his injuries. She said she made this finding notwithstanding the question over the date. The photograph in the bundle had no date on it and the father's original account had contained a simple mistake.
10. She also stated that the father's account was supported by his parents (although she noted that they had not given oral evidence so that she had to be careful as to how much weight to attach to that).
11. The Recorder also stated that she found the tone of various of the mother's messages to and about the father to be overbearing.

#### The appeal

12. The mother appeals this finding on two grounds:-
  - (1) The judge stated there was no date stamp on the photo but the father had said in his written evidence he had obtained the date from the date on his phone;
  - (2) The judge had become confused by the various accounts in the evidence and had wrongly relied on what she thought was the mother's evidence about having no injuries to her arms and shoulders, whereas it was the father who had given that evidence, not her.
13. The mother also argued that the father's injuries were not consistent with the assault he said the mother had carried out.
14. The father was invited to file a skeleton argument, but instead he sent an email to the appeals office in which he rejected the mother's submissions. This email did not address the specific arguments put forward by her but said that she was trying to attain a 'poor me' status and that it was she who was violent and not him. He declined to file a further document in advance of the permission hearing.

15. The father did attend the remote permission hearing, although of course the purpose of that is not to hear the arguments from both sides but simply to decide whether permission should be granted.
16. Once permission was granted the father was ordered to file a skeleton argument for the substantive appeal hearing to put forward his specific response to the mother's application but he has chosen not to do so. He then contacted the appeal office on the morning of the hearing to say that he had been offered work for today, and given the difficulties of working during the pandemic, he had decided to take it. He stated that he understood that the court would carry on and hear the appeal in his absence.
17. On 9<sup>th</sup> November the father, as ordered some time ago, filed a copy of the photographs of his injuries with the accompanying date as obtained from his phone. They demonstrate quite clearly that the father took three photos of his injuries, at 19.29 on 9<sup>th</sup> November, 21.34 on 9<sup>th</sup> November and at 10.58 on 10<sup>th</sup> November.

#### Decision and conclusions

18. This appeal is brought principally on the short point about the date. It is very rare for an issue in a case to turn on a point like this, as memories are often unreliable and it is quite easy for one date to be confused with another.
19. The photographs now provided with the proper date stamps now clearly demonstrate that the father took the photos on Friday 9<sup>th</sup> November and on the morning of Saturday 10<sup>th</sup> November, before he said the assault happened.
20. The father gave a lot of evidence as to the context of the assault and the events leading up to it which simply do not fit with when he took the photographs. In his oral evidence he disputed the mother's account that he had assaulted her on the Friday evening and specifically said that nothing had happened then. Both in his written evidence and his oral evidence he said a great deal about what he said had led up to the assault by the mother, including that the argument had gone on for most of the day. She had picked an argument with him in the morning, taken the children swimming, and resumed where she had left off when she brought them back. He then said he left the home almost immediately because of the assault. He certainly did leave on the 10<sup>th</sup> as the hotel records show his stay commencing then.
21. Given the level of detail he gave surrounding the event which placed it on a non-working day following which he immediately left the home, I am satisfied that the independent dating of the photos would have undermined the father's reliability and credibility about the whole incident, and would have been something the Recorder would have been bound to take into account in coming to her decision to make the finding she did. The issue so far as the mother's injuries, or lack of them, also depended upon that very issue.
22. In all the circumstances, I will set this finding of the Recorder aside. I understand orders have been made in the Children Act proceedings. The children are living with their mother and there is a contact order in favour of the father. I therefore think it

would not be desirable or proportionate for this matter to be remitted for a rehearing and so the matter will rest as it is.